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**Introduced by Senator Maldonado**

February 22, 2005

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An act to amend Section 1776 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 759, as introduced, Maldonado. Public works: payroll records.

Existing law generally requires the payment of the general prevailing rate of per diem wages for workers employed on public works, as defined, costing over \$1,000. Existing law requires each contractor and subcontractor performing work on a public work to keep payroll records regarding his or her employees. Existing law requires that these records contain the information specified by the Division of Labor Standards Enforcement.

This bill would, for the purposes of these payroll recordkeeping requirements, authorize the use of printouts of payroll data that are maintained as computer records, if certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1776 of the Labor Code is amended to
- 2 read:
- 3 1776. (a) Each contractor and subcontractor shall keep
- 4 accurate payroll records, showing the name, address, social
- 5 security number, work classification, straight time and overtime
- 6 hours worked each day and week, and the actual per diem wages
- 7 paid to each journeyman, apprentice, worker, or other employee
- 8 employed by him or her in connection with the public work.

1 Each payroll record shall contain or be verified by a written  
2 declaration that it is made under penalty of perjury, stating both  
3 of the following:

4 (1) The information contained in the payroll record is true and  
5 correct.

6 (2) The employer has complied with the requirements of  
7 Sections 1771, 1811, and 1815 for any work performed by his or  
8 her employees on the public works project.

9 (b) The payroll records enumerated under subdivision (a) shall  
10 be certified and shall be available for inspection at all reasonable  
11 hours at the principal office of the contractor on the following  
12 basis:

13 (1) A certified copy of an employee's payroll record shall be  
14 made available for inspection or furnished to the employee or his  
15 or her authorized representative on request.

16 (2) A certified copy of all payroll records enumerated in  
17 subdivision (a) shall be made available for inspection or  
18 furnished upon request to a representative of the body awarding  
19 the contract, the Division of Labor Standards Enforcement, and  
20 the Division of Apprenticeship Standards of the Department of  
21 Industrial Relations.

22 (3) A certified copy of all payroll records enumerated in  
23 subdivision (a) shall be made available upon request by the  
24 public for inspection or for copies thereof. However, a request by  
25 the public shall be made through either the body awarding the  
26 contract, the Division of Apprenticeship Standards, or the  
27 Division of Labor Standards Enforcement. If the requested  
28 payroll records have not been provided pursuant to paragraph (2),  
29 the requesting party shall, prior to being provided the records,  
30 reimburse the costs of preparation by the contractor,  
31 subcontractors, and the entity through which the request was  
32 made. The public may not be given access to the records at the  
33 principal office of the contractor.

34 (c) The certified payroll records shall be on forms provided by  
35 the Division of Labor Standards Enforcement or shall contain the  
36 same information as the forms provided by the division. *The*  
37 *payroll records may consist of printouts of payroll data that are*  
38 *maintained as computer records, if the printouts contain the*  
39 *same information as the forms provided by the division and the*  
40 *printouts are verified in the manner specified in subdivision (a).*

1 (d) A contractor or subcontractor shall file a certified copy of  
2 the records enumerated in subdivision (a) with the entity that  
3 requested the records within 10 days after receipt of a written  
4 request.

5 (e) Any copy of records made available for inspection as  
6 copies and furnished upon request to the public or any public  
7 agency by the awarding body, the Division of Apprenticeship  
8 Standards, or the Division of Labor Standards Enforcement shall  
9 be marked or obliterated to prevent disclosure of an individual's  
10 name, address, and social security number. The name and  
11 address of the contractor awarded the contract or the  
12 subcontractor performing the contract shall not be marked or  
13 obliterated. Any copy of records made available for inspection  
14 by, or furnished to, a joint labor-management committee  
15 established pursuant to the federal Labor Management  
16 Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked  
17 or obliterated only to prevent disclosure of an individual's name  
18 and social security number. A joint labor management committee  
19 may maintain an action in a court of competent jurisdiction  
20 against an employer who fails to comply with Section 1774. The  
21 court may award restitution to an employee for unpaid wages and  
22 may award the joint labor management committee reasonable  
23 attorney's fees and costs incurred in maintaining the action. An  
24 action under this subdivision may not be based on the employer's  
25 misclassification of the craft of a worker on its certified payroll  
26 records. Nothing in this subdivision limits any other available  
27 remedies for a violation of this chapter.

28 (f) The contractor shall inform the body awarding the contract  
29 of the location of the records enumerated under subdivision (a),  
30 including the street address, city, and county, and shall, within  
31 five working days, provide a notice of a change of location and  
32 address.

33 (g) The contractor or subcontractor has 10 days in which to  
34 comply subsequent to receipt of a written notice requesting the  
35 records enumerated in subdivision (a). In the event that the  
36 contractor or subcontractor fails to comply within the 10-day  
37 period, he or she shall, as a penalty to the state or political  
38 subdivision on whose behalf the contract is made or awarded,  
39 forfeit twenty-five dollars (\$25) for each calendar day, or portion  
40 thereof, for each worker, until strict compliance is effectuated.

1 Upon the request of the Division of Apprenticeship Standards or  
2 the Division of Labor Standards Enforcement, these penalties  
3 shall be withheld from progress payments then due. A contractor  
4 is not subject to a penalty assessment pursuant to this section due  
5 to the failure of a subcontractor to comply with this section.

6 (h) The body awarding the contract shall cause to be inserted  
7 in the contract stipulations to effectuate this section.

8 (i) The director shall adopt rules consistent with the California  
9 Public Records Act (Chapter 3.5 (commencing with Section  
10 6250) of Division 7 of Title 1 of the Government Code) and the  
11 Information Practices Act of 1977 (Title 1.8 (commencing with  
12 Section 1798) of Part 4 of Division 3 of the Civil Code)  
13 governing the release of these records, including the  
14 establishment of reasonable fees to be charged for reproducing  
15 copies of records required by this section.